

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 7990 of 1999

to

FIRST APPEAL No 8041 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

and

Hon'ble MR.JUSTICE J.R.VORA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

NANJI JINA

Appearance:

MR UMESH TRIVEDI, AGP for Appellants

MR VIMAL M PATEL for the Respondents claimants

CORAM : MR.JUSTICE M.R.CALLA

and

Date of decision: 08/03/2001

COMMON ORAL JUDGEMENT (Per : MR.JUSTICE M.R.CALLA)

1. This group of 52 Appeals under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Civil Procedure Code, 1908, is directed against the common judgment and order dated 1st April, 1999 passed by the Jt. District Judge at Junagadh, in Land Reference Cases No. 170/87 to 175/87 with regard to village Dadar; 144/87 to 147/87 and 188/91 with regard to village Chiroda; 148/87 to 154/87 and 176/87 with regard to village Monia; 155/87 to 169/87 with regard to village Jamvala, 99/88 to 100/88 and 203/88 with regard to village Jamka; 137/88 to 151/88 with regard to village Motikhodiyar. First Appeals No. 7990/99 to 7995/99 arise out of the decision in Reference Cases No. 170/87 to 175/87; First Appeals No. 7996/99 to 7998/99 arise out of Land Reference Cases No. 144/87 to 147/87 and 188/91; First Appeals No. 7999/99 to 8008/99 arise out of Land Reference Cases No. 148/87 to 154/87 and 176/87; First Appeals No. 8009/99 to 8021/99 arise out of Land Reference Cases No. 155/87 to 169/87, First Appeals No. 9024/99 to 9026/99 arise out of Land Reference Cases No. 99/88 to 100/88 and 203/88 and First Appeals No. 9027/99 to 9041/99 arise out of Land Reference Cases No. 137/88 to 151/88.

2. For acquiring the lands of the aforesaid six villages, namely, Dadar, Chiroda, Monia, Jamvala, Jamka and Motikhodiyar in District Junagadh for the purpose of Visavadar Mendarda Road Project Scheme, the Notifications u/s 4 were issued on 13.11.80, 01.01.1981, 21.11.980, 1.1.1988, 29.5.1987 and 30.9.1982. Thereafter the Notification u/s 6 was issued and thereafter the concerned Land Acquisition Officer passed the Award in each of these groups for the different villages on 12th May, 1983, 21st June, 1982, October 82, 16th June, 1982 and 15th May, 1986 read with the corrigendum 13th March, 1987, respectively.

3. The depositions made by the witnesses at Exh. 22 and Exh. 52 for the village Dadar; Exh. 24, Exh. 35 and Exh. 36 for village Chiroda; Exh. 13 for village Monia; Exh. 71, Exh. 89, Exh. 93, Exh. 87 and Exh.88 i.e. sale deed dated 15.5.81 for village Jamvala; deposition Exh. 26 for village Jamka and depositions Exh. 15, Exh. 68 deposition Exh. 69 and the document at Exh. 70 i.e. Sale Deed dated 16.11.81 for the

village Moti Khodiyar were relied upon by the court which decided the reference cases.

4. This common award dated 1st of April, 1999 is the subject matter of challenge in this group of 52 Appeals. Whereas the challenge is based on common grounds, we propose to decide this group of appeals by this common judgment and order as under :-

5. So far as the rate which has been determined for granting compensation by the Reference Court is concerned the same has not been challenged by the appellants but it has been argued on behalf of the appellants that Reference itself was incompetent and invalid inasmuch as it was a case of time barred References and that the respondents claimants had accepted the amount as was awarded to them and, therefore, after accepting this amount they could not have challenged the same by way of filing the References u/s 18. The case of the respondents claimants herein is that no notice u/s 12(2) was served upon them and no evidence had been produced to show that such notice had been issued and served and further that the References were filed in all the cases within six months from the date of the knowledge of the award and, therefore, all these References were within time in accordance with the provisions of Section 18. The first argument relating to the references being time barred has been dealt with by the Reference Court in para-35 of the impugned order. Besides this, we inquired from the learned Asst. Government Pleader as to whether any such Notices duly served were produced before the Reference Court in order to substantiate the grounds of limitation and Mr. Umesh Trivedi, learned AGP has very frankly stated that such notices were not produced. He submits that the oral deposition had been made by the departmental witness that the notices had been served but in this deposition also no particulars about the date of the issue and service of notice were given out. We further called upon the learned AGP that he may even now produce such notices before us and show that in fact such notices were issued and served. Yet, even with the assistance of the officers of the department who are present in the court with the record, he failed to show any such notices in the record. Even other wise, in case the primary evidence was there on the question that the Notices u/s 12(2) had been issued and served, such evidence ought to have been produced before the Reference Court. In case it was not produced there, it could be produced even before this Court particularly when the appellants were called upon to produce such notice. It is therefore clear that there is no documentary evidence

to substantiate the objection of limitation as has been raised on behalf of the appellants that the References were time barred. One fails to understand as to why for what good reasons such notices were not produced before the Reference Court or even before this Court in case such notices were in fact issued and served. Therefore, we find that the contemporaneous evidence with regard to the service of notices u/s 12(2) is either not in existence and if at all it is in existence, the same has not been produced either before the Reference Court or before this Court and, therefore there is nothing to substantiate the fact that notices u/s 12(2) had been issued and served upon the respondent claimants. The oral deposition which is as vague as it could be without any particulars about the date of issue and date of service on the particular respondent claimant, is hardly sufficient to hold that the Notices u/s 12(2) had been issued and served. If that be so, the limitation is there for the period of six months from the date of the award and there is nothing on record to show that these references had been made after the expiry of the period of six months. While it is the case of the respondents claimants that the References had been filed within the period of six months from the date of the knowledge of the award and the fact that the References were in fact filed within the period of six months from the date of the knowledge of the award is not in dispute. We therefore hold that the References were made within the time and the objection as has been raised on behalf of the appellants fail.

6. The other ground which has been urged that the References were not competent because the claimants had accepted the amount under the award and having accepted the amount under the award they could not have filed the References, also cannot be sustained for the simple reason that the acceptance of the amount under the award is no bar for the purpose of challenging the same by way of Reference. We are fortified in taking this view by a decision of the Division Bench of this Court cited by Mr. Vimal Patel learned counsel for the respondent claimants in the case of PATEL NATVARBHAI PRABHUDAS vs. SPECIAL LAND ACQUISITION OFFICER, reported in 1999 (1) GLR 437. The Division Bench of our own High Court in this decision has held that merely because claimants had accepted the compensation amount it cannot be presumed that they had accepted the award and thereby became disentitled to challenge the same by way of filing the reference as contemplated under Sec.18 of the Act. In the above decision the Division Bench had allowed the Special Civil Application and remanded the matter back to the Reference

Court at the instance of the respondent - claimants, who had come to challenge the order by which references were rejected on the ground that they had accepted the amount under the award. We, therefore, find that in the instant case even if the claimants had accepted the amount under the award, they could still challenge the award by way of reference u/s 18 and the acceptance of the amount under the award, could not debar them from filing the reference and the argument that references were incompetent on this ground can't be sustained. Thus, this second ground raised on behalf of the appellants also fail.

7. Learned AGP Mr. Umesh Trivedi then submitted that the respondents claimants were not entitled to the interest on the amount of solatium and the additional compensation under Sec. 23(1-A) and the direction as has been given by the Reference Court to that effect awarding interest on the solatium and the additional compensation is wrong. Today itself this very question has been considered by us in another group of Appeals First Appeals No. 489/2000 to 496/2000. In that group it was pointed out by the learned counsel on behalf of the respondent - claimants that this question is pending before the Larger Bench of the Supreme Court as per the order in case of KAPURCHAND JAIN vs. STATE OF HIMACHAL PRADESH, reported in AIR 1999 SC 3470. Be that as it may, as the law stands today, neither the solatium nor the additional compensation u/s Sec. 23(1-A) can be treated as a component of compensation for the purpose of entitlement of interest and therefore we set aside that part of the direction contained in the impugned order with regard to the interest on solatium and the additional compensation under Sec. 23(1-A) and the impugned Award shall stand modified accordingly. In case, the questions which have been referred and which are pending before the Larger Bench of the Supreme Court in terms of the order passed in case of Kapurchand Jain (supra) are answered in favour of the respondent-claimants herein, it will be open for them to seek appropriate legal remedy as may be available to them.

8. In the result, all these 52 First Appeals are hereby partly allowed as above and the impugned award is modified to the limited extent that the respondent claimants shall not be entitled to any interest on the solatium and the amount of additional compensation under Sec. 23(1-A). Rest of the award remains intact. No order as to costs.

9. It is expected that the appellants shall pay the due amount of compensation in terms of this order to the

claimants in all these matters within a period of three months from the date the certified copy of this order is served upon them by either of the parties.

(M.R. Calla, J.)

(J.R. Vora, J.)

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